

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

ERIC A. FARRIS

Respondent.

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) Supreme Court #SC94418

RESPONDENT'S BRIEF

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RESPONDENT

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STATEMENT OF JURISDICTION

Respondent joins and adopts the jurisdictional statement of the Informant.

STATEMENT OF FACTS

Respondent supplements the Informant's Statement of Facts to clarify certain incorrect impressions that might flow from the Informant's selection for recitation and to more fully describe the evidence before the Court.

The Informant informed the Court that Respondent provided "inter-office" memos between his staff and himself as to phone calls made to and with Mrs. Sisson. Those communications were actually e-mails not memos. App. 572-585.

The Informant informed the Court that Mrs. Sisson had an appointment with the Respondent to "discuss the balance in his trust account" on February 16, 2011. Mrs. Sisson actually testified that she wanted general information about the case status. App. 91; 654. Contrary to Informant's Statement of Facts, there was no reference in the record to her wanting to "discuss the balance in his trust account" at any meeting with Respondent.

Mrs. Sisson and her husband met with Respondent on September 28, 2013 to discuss the settlement and to endorse the settlement check. Mrs. Sisson testified that she understood that Respondent would try to negotiate down the outstanding medical bills. App. 114. Mrs. Sisson testified that sometime later she decided that she wanted some money from the settlement and asked for it and received the sum of \$50,000. App. 114-115. Mrs. Sisson also testified that she met with Respondent on February 16, 2011 and that Respondent discussed with her the possibility that the hospital might write off the medical debt. App. 119-120.

The Informant informed the Court that Mrs. Sisson meet with Respondent and his former wife, Elizabeth, on November 15, 2014 and that either the Respondent or his former wife told Mrs. Sisson they had “miscalculated” the amount due to her. Mrs. Sisson actually testified that Respondent’s former wife primarily talked to her during this meeting. App. 134-135. Mrs. Sisson actually testified that she was told that “the check was taken out from account that the money wasn’t there”. App. 98. She also testified that Respondent’s former wife informed her that “sixty-some thousand dollars that was in the account had been paid to the hospital”. App. 138-139. Mrs. Sisson also testified that Respondent told her that he would reduce his fee so that her net recovery would be \$65,000, an amount greater than Respondent’s attorney fee. App. 138-139. Respondent also testified that he reduced his fee so that Mrs. Sisson’s net recovery would be greater than the amount of Respondent’s attorney fee. App. 402-404. Informant also did not inform the Court that Respondent testified that his former spouse told Mrs. Sisson that “the reason that the bank did not clear the bank, that Eric had given you, was Eric shouldn’t have given you that because I wrote the check to pay the medical bills”. App. 402.

The Informant informed the Court of the transfers that were made from the trust account. Informant did not inform the Court that the Informant’s investigator, Kelly Dillon, testified that she was unable to determine that Respondent personally made said transfers. App. 147-148.

The Informant informed the Court that Informant’s position was that Respondent failed to provide documentation to Informant. Informant failed to inform the Court that the Informant’s investigator, Kelly Dillon, sent certain letters to a Respondent with a warning that if a response is not received by a set deadline that the failure would be considered to be a disciplinary

violation and that she did not ever communicate to Respondent that he had not complied with such a deadline. App. 203; 208, 209. Informant also failed to inform the Court that Ms. Dillon testified that she would not deny that the supplemental records requested had been mailed by Respondent. App. 208-213. Informant also failed to inform the Court that Respondent testified that the supplemental records were provided to OCDC and submitted said forms marked as Exhibit “D” to the Hearing Panel. App. 467-468. Informant also failed to inform the Court that counsel for the Informant, Randee Stemmons, advised the Hearing Panel that she did not doubt that the bank statements requested by OCDC had been provided by Respondent. App. 486.

The Informant informed the Court about Respondent’s November 22, 2010 pulmonary embolism. Informant failed to inform the Court that Respondent’s physician, Dr. Mohammed Bakry, testified that the extent of his illness would have caused “seventy-five percent (75%) of patients with this magnitude of blood clots die before they come to the hospital” and it caused the Respondent “right side heart failure”. App. 276-277. The Informant also failed to inform the Court that Dr. Bakry testified that he advised Respondent to “stay out of the office at least two weeks”, that “sometimes a couple of months to completely go back to the normal size and talk about the right side of the heart” and that it requires “up to six months” for the clots in your legs to dissolve. App. 277-288. The Informant also failed to inform the Court that he had a second Pulmonary Embolism during April, 2013. App. 280, 289-290.

The Informant informed the Court about the testimony from the current and former clients of Respondent who testified about his professionalism and stellar reputation. Informant failed to inform the Court that a former legal secretary of Respondent's law firm, Danielle Wilson, also testified that Respondent's former spouse took over and controlled the administrative, financial and accounting matters of the office. App. 314-318. Ms. Wilson also testified that Respondent's former spouse gave instructions to the staff that all non-legal matters and phone calls were to be directed to her and not Respondent, that she was told by Respondent's former spouse to not tell Respondent when his family members would call the office for him and that Respondent's former spouse mandated that all administrative mail, including bank statements, were to go her her and "they were not to go to you at all". Ms. Wilson testified that Respondent's former spouse "had to have control of everything". App. 317-318. Informant also failed to inform the Court that the Hearing Panel refused to accept an email written by Respondent's former spouse in which she claimed to "control Farris Law Group". App. 519. Informant also failed to inform the Court that a court reporter, Susan Boyce, testified that in her interaction with Respondent including 150-200 depositions, that Respondent provides his clients with professional representation. App. 366-368.

The Informant informed the Court about Respondent's legal career. Informant did not inform the Court that Respondent has been active in public service, having served as a City Alderman with the City of Branson, as the Chairman of the Board of the Branson Downtown Main Street Association, and that Respondent has been active within the Bar, having served as the first Chairman of the Missouri Bar's Immigration Law Committee. App. 372-379.

The Informant informed the Court about Respondent's wife being "controlling". Informant did not inform the Court that, discovering the behavior of Respondent's former spouse "sicken" him to discover what she did with the missing funds. App. 387. Informant also did not inform the Court that Respondent testified that his former spouse's dominance over the firm's administrative matters increased after Respondent broke his wrist in 2009 and had his pulmonary embolism in 2010. App. 391. Informant also did not inform the Court that Respondent testified that he thought he could trust his former spouse but as it turned out "she's a lying thief" and a "not a person who could be trusted". App. 391. Respondent also testified that he "shouldn't have trusted a spouse who turned out to be a thief" and he made a "mistake of trusting a thieving spouse" App. 471; 475. Informant also did not inform the Court that Respondent discovered during the case that his former spouse lied to him during the OCDC investigation. App. 392. Informant also did not inform the Court that Respondent did believe that when he wrote the \$31,756.11 check to Mrs. Sisson that "the funds were in there". App. 392. Informant also did not inform the Court that Respondent testified that this "is a case of an attorney who was taken advantage of by his thieving spouse that caused this problem". App. 512.

Informant also did not inform the Court that Respondent's former spouse was aware of the settlement amounts of the Sisson and Daughenbaugh matters and that he reminded her several times that those amounts were to be held for those two (2) clients. App. 393-394. Informant also did not inform the Court how the billing happened in the firm, i.e. that the billing was done and his former spouse was notified of "the number" which she could transfer from the trust account to the operating account to apply to the bills. App. 393-397.

Informant also did not inform the Court that when Respondent's former spouse told him when she told that the \$31,756.11 check to Mrs. Sisson did not clear the trust account, that "Oh, I looked it up, and I must have misunderstood.....I was so under stress with Dimitri and his seizures, and I remembered you talking about that money was for medical bills. So, what I did was....I wrote a check out of the trust and I paid it. I paid it for the medical bills." App. 401. Informant also did not inform the Court that Respondent did not direct his former spouse to pay the Sisson medical bills. App. 401.

Informant informed the Court how Respondent was shocked when told at the November 27, 2012 meeting of the regional committee that the check that had been provided to him by his former spouse purporting to show payment to Skaggs Hospital of Mrs. Sisson's medical bills had not been presented on the trust account or received by the Hospital. Informant did not inform the Court that the counsel for the Informant, Randee Stemmons, confirmed in a conversation with Respondent that he did, in fact, appear to be shocked when told about the missing check. App. 407-408. Informant also did not inform the Court that Respondent testified that up until that point, Respondent "firmly believed that the money had been in the account, the money had been paid out of the account, been paid to Skaggs Hospital". App. 408.

The Informant failed to inform the Court that, in addition to the criminal complaint that was filed by Respondent against his former spouse about the missing client funds, he also filed criminal complaints against her for making unauthorized misappropriations from the firm's operating account and by forging a ACH card at Target in the firm's name. App. 506-509.

Informant failed to inform the Court that Respondent expressed regret and sorrow to Mr. and Mrs. Sisson and Mr. and Mrs. Daughenbaugh in his testimony, to wit: “I am sorry for these clients. I am deeply sorry to them that this has happened to them. I care about my clients. I don’t anything at all poorly to happen to my clients and am sorry to them that this has happened. They are victims and, in turn, because of the fact that someone who at least so far hasn’t had a consequence, is causing damage to myself, as well, but their damage is first and foremost.” App. 400.

Informant informed the Court that an admonition had been issued to Respondent in February, 1998. Informant omitted to inform the Court as to an explanation of the underlying facts of said admonishment. As testified to by Respondent, a couple of years after he began practicing law, he took on a contingency fee case with the agreement that the client would be responsible to pay the up-front costs. During the pendency of the case, the client refused to pay for the deposition transcripts. Respondent then filed a Motion to Withdraw with “form language” via copy and pasting the body of the motion onto the case caption from another case. The admonition was issued after the court allowed the withdrawal because the language in the motion stated that the client had not paid the fee, while the motion should have stated that the client refused to pay the costs. The use of the word “fee” instead of “costs” made the Motion to Withdraw inaccurate as to a statement filed with the trial court so OCDC offered an admonition which was accepted by Respondent. App. 381-383.

Informant failed to inform the Court that Respondent testified that when he was in charge of the administrative matters of his office, he properly handled the distributions to a client and various medical providers for a case that settled for \$700,000. App. 401.

Informant failed to inform the Court that there is no evidence that Respondent acted with any intent to misappropriate the missing funds. App. 512.

Informant failed to inform the Court that Respondent urged the Hearing Panel to stay discipline with a probation plan that would include payment of restitution, participation in the law practice management and client trust account continuing legal education programs, participation the OCDC ethics school, to obtain a mentor in the legal community who is equipped in office management, to prepare an office management plan to be approved by OCDC and if necessary, employ a qualified consultant to help in office management type tasks and a requirement that, in the event of receipt of more than “X” amount of dollars from a client or client matter, then Respondent be required to provide documentation as to the disposal of those funds to either a mentor or to OCDC. App. 516-517.

Informant failed to inform the Court that Respondent testified that “It is my hope and I pray, that you will allow me to continue in the practice of law. It’s my life. Its what enjoy. It’s what I do well. And it is what need to do to help my clients, and..... would ask that you allow me to make another generation of clients proud to have me as their lawyer.” App.517

Additional Evidence Which Should be Considered by the Court

The Court should consider the following evidence which is addressed in the Respondent’s Motion to Remand Action to the Disciplinary Hearing Panel or in the Alternative, Motion for Court to Order Counsel to Conduct Depositions of Witnesses to Perpetuate Testimony to Supplement the Record or in the Alternative, Motion for Court to Take Judicial Notice of Additional Facts:

The Disciplinary Hearing Panel conducted a hearing on November 18, 2013 and issued its decision on July 9, 2014. Since the hearing date, additional facts have surfaced in regard to this action due to the investigation of law enforcement and certain legal rulings in related litigation. The following facts were not before the Disciplinary Hearing Panel at the time of its November 18, 2014 hearing or its June 26, 2014 decision. Those facts, include but are not limited to the following:

1. The investigation by law enforcement has revealed that a representative of Ozark Mountain Bank, the banking institution of the Respondent's trust account, cited that Respondent's former spouse, the former Chief Operating Officer (COO) of Respondent's law firm, personally and exclusively transferred the funds which are missing from the trust account by phone and that she made One Hundred Percent (100%) of the subject transfers by phone.
2. Respondent's former spouse, the former Chief Operating Officer (COO) of Respondent's law firm, was charged with two (2) class B felony counts of stealing the missing funds on May 29, 2014. See State of Missouri v. Elizabeth D. Farris, Taney County Circuit Court, Case 14AF-CR01301. Pursuant to the Probable Cause Statement, Respondent's former spouse:

"Elizabeth D. Farris committed the Class B Felony of Stealing (Two Counts) by appropriating funds from his (sic) firm's trust account with the purpose to deprive victims B.S. and G.D. of payment from their settlement which was to be used to pay medical bills. Both B.S. and G.D. hired Eric Farris in September, 2010 in which both received settlements B.S. \$197,500.00 and G.D. \$90,000.00. B.S. and G.D. were to have funds taken from their settlement

to settle unpaid medical bills to Skaggs Hospital now known as Cox Health in Branson.

Elizabeth D. Farris was the Chief Operating Officer for the firm and handled all the finances which was confirmed by former and current employees with Farris Law Group. Elizabeth D. Farris had access to the Trust and Operating Account and handled all of the firm's financial business with the firm. Elizabeth D. Farris took currency from the trust account and used the currecny (sic) for personal use knowing the money belonged to victim B.S. and G.D. and did so without the consent of the victims."

3. On September 16, 2014, after hearing the testimony of nine (9) witnesses, including the testimony of Kelly Dillon, an investigator with the Office of the Chief Disciplinary Counsel, the Court in the felony stealing case against Respondent's former wife, found "probable cause to believe that the crime alleged was committed and that deft (sic) committed it". As cited above, the Court in the felony stealing case heard testimony at the Preliminary Hearing from a representative of Ozark Mountain Bank, the banking institution of the Respondent's trust account, who testified under oath that Respondent's former spouse, the former Chief Operating Officer (COO) of Respondent's law firm, personally and exclusively transferred the funds which are missing from the trust account by phone and that she made One Hundred Percent (100%) of the subject transfers by phone. See the docket entries in State of Missouri v. Elizabeth D. Farris, Taney County Circuit Court, Case 14AF-CR01301.

4. On July 17, 2014, Judge Charles Curless in the dissolution case (the 6th judge in said case), granted an Interlocutory Judgment formally dissolving the marriage between Respondent and his former spouse after the case had been pending for more than a year. See the docket entries in Farris v. Farris, Taney County Circuit Court, Case No. 13AF-CC00480.

CASE SUMMARY

Respondent has served thousands of satisfied clients throughout Southwest Missouri as a lawyer for more than 20 years, all with a relatively clean disciplinary history. During his two decades of Bar membership, Respondent has been an active member of the Bar, including his service as the first Chairperson of the Bar's Immigration Law Committee.

There is no evidence in this case that Respondent misappropriated the missing funds. Instead, his former spouse has been charged with two (2) Class B Felony counts of stealing said funds. Respondent has taken actions to correct past problems and to avoid future problems with regard to the administration of his law office, namely taking control of the accounting, reviewing the new IOLTA rules, studying the ABA Guide to Lawyer Trust Accounting and securing funds for restitution from the cash value of his life insurance policy.

SISSON REPRESENTATION

In 2005, Respondent took on representation of Betty Sisson and her husband in regard to an workplace injury that started as a workers compensation claim and which changed to a personal injury claim. The claim settled on September 7, 2010 at mediation for \$197,500.00.

Skaggs Hospital had filed a Notice of Hospital Lien in the amount of \$114,604.31. Mrs. Sisson requested Respondent to negotiate with the hospital to reduce the lien amount. Mrs. Sisson decided that she wanted some funds from the settlement and received the sum of \$50,000.00 via a check written on the Respondent's trust account on January 13, 2011.

Mrs. Sisson had several conversations with Respondent and Respondent's staff thereafter about whether the lien could be reduced or even whether the hospital might write off the debt. During October, 2011, Mrs. Sisson requested an additional sum from the settlement whereupon she and Respondent discussed how he could release an additional sum of \$31,756.11 to her and hold the remainder for the outstanding medical bills. Mrs. Sisson received a check from the Respondent's trust account in that amount on October 21, 2012 and deposited the check into her bank account. The check was returned for insufficient funds.

Mrs. Sisson called and notified Respondent that the check "bounced". Respondent was shocked and asked his former spouse about why the check did not clear the trust account. Respondent's former wife told him that she was confused and had written a check for the remaining sum in the trust account for the settlement to the hospital for payment of the medical bills. Respondent's former wife presented to him a photocopy of a check written on the trust account in the sum of \$66,360.42 to the hospital. Respondent's former spouse told him that she had used his signature stamp on the check. At a meeting on November 15, 2011, Respondent's former wife repeated this to Mrs. Sisson. At this meeting, Mrs. Sisson was provided a written breakdown of the settlement funds including a payment to the hospital in the sum of \$66,360.42 as payment of the medical bills.

During the November 15, 2011 meeting, Respondent agreed to reduce his attorney fee of \$79,000.00 (40% of the gross settlement) by \$15,000 so that his contingent fee would not exceed her total recovery of \$65,000.00. The sum of \$15,000.00 was paid to Mrs. Sisson over 3-4 months.

During a meeting of the Region XV Disciplinary Committee on November 27, 2012, Respondent was informed that the \$66,360.42 check to Skaggs Hospital had not been received by the hospital and has not cleared the account. This was unknown to Respondent until this meeting as his former spouse had provided a copy of the check to him and he had included it in his response to the OCDC complaint.

DAUGHENBAUGH REPRESENTATION

Mr. and Mrs. Daughenbaugh were represented by Nicole Hahn, a former associate attorney with Respondent's law firm. Their personal injury claim was settled for \$90,000.00 plus expenses on September 9, 2010. Respondent wrote a check in the sum of \$32,497.10 for their net recovery on September 24, 2010. A total of \$27,132.20 was withheld to pay their medical bills and \$30,000 was the firm's attorney fee. Respondent was told by his former spouse that the medical bills had been paid from the trust account. An audit by OCDC of the Respondent's trust account revealed that no such payments had been paid toward the medical bills.

Respondent now asks the Court to exercise its inherent power and to examine this case *de novo*. Respondent asks this Court that if determines that discipline is necessary then it impose at most a stay on discipline and probation. This outcome would protect the public and the integrity of the Bar and sanction him accordingly.

POINTS RELIED ON

- I. THIS COURT SHOULD NOT DISCIPLINE RESPONDENT SINCE INFORMANT DID NOT PROVE BY A PREPONDERANCE OF EVIDENCE THE ALLEGATIONS CONTAINED IN THE FIRST POINTS RELIED ON OF THE INFORMANT'S BRIEF IN THAT THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING MISAPPROPRIATION, SAFEKEEPING PROPERTY, DECEIT, MISREPRESENTATION AND COMMUNICATION IN HIS HANDLING OF CLIENT AND THIRD PARTY FUNDS IN BOTH THE SISSON AND DAUGHENBAUGH MATTERS AND THAT THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT ENGAGED IN DECEIT, DISHONESTY AND MISREPRESENTATION BY PRESENTING FALSE EVIDENCE TO THE OCDC AND THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT FAILED TO COOPERATE WITH THE DISCIPLINARY COUNSEL'S INVESTIGATION AND THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT FAILED TO RETAIN HIS CLIENT FILES IN ACCORDANCE WITH THE TEN YEAR REQUIREMENT IMPOSED BY THE RULES OF PROFESSIONAL CONDUCT.

In re Littlton, 719 S.W.3d, 772, 775 (Mo. banc 1986)

In Re Oberhellmann, 873 S.W.2d 851, 852 (Mo. banc 1994).

POINTS RELIED ON

- II. THIS COURT SHOULD NOT IMPOSE DISBARMENT AS THE SANCTION IN THIS CASE SINCE INFORMANT DID NOT PROVE BY A PREPONDERANCE OF EVIDENCE THE ALLEGATIONS CONTAINED IN THE SECOND POINTS RELIED ON OF THE INFORMANT'S BRIEF IN THAT THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING MISAPPROPRIATION, SAFEKEEPING PROPERTY, DECEIT, MISREPRESENTATION AND COMMUNICATION IN HIS HANDLING OF CLIENT AND THIRD PARTY FUNDS IN BOTH THE SISSON AND DAUGHENBAUGH MATTERS AND THAT THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT ENGAGED IN DECEIT, DISHONESTY AND MISREPRESENTATION BY PRESENTING FALSE EVIDENCE TO THE OCDC AND THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT FAILED TO COOPERATE WITH THE DISCIPLINARY COUNSEL'S INVESTIGATION AND THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT FAILED TO RETAIN HIS CLIENT FILES IN ACCORDANCE WITH THE TEN YEAR REQUIREMENT IMPOSED BY THE RULES OF PROFESSIONAL CONDUCT AND THE FACTS AND EVIDENCE DO NOT SUPPORT A CONCLUSION THAT DISBARMENT IS AN APPROPRIATE SANCTION IN THIS CASE.

In re Coleman, 295 S.W.3d 857, 869 (Mo. 2009)

In re Wiles, 107 S.W.3d 228 (Mo. 2003)

ARGUMENT

- I. THIS COURT SHOULD NOT DISCIPLINE RESPONDENT SINCE INFORMANT DID NOT PROVE BY A PREPONDERANCE OF EVIDENCE THE ALLEGATIONS CONTAINED IN THE FIRST POINTS RELIED ON OF THE INFORMANT'S BRIEF IN THAT THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING MISAPPROPRIATION, SAFEKEEPING PROPERTY, DECEIT, MISREPRESENTATION AND COMMUNICATION IN HIS HANDLING OF CLIENT AND THIRD PARTY FUNDS IN BOTH THE SISSON AND DAUGHENBAUGH MATTERS AND THAT THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT ENGAGED IN DECEIT, DISHONESTY AND MISREPRESENTATION BY PRESENTING FALSE EVIDENCE TO THE OCDC AND THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT FAILED TO COOPERATE WITH THE DISCIPLINARY COUNSEL'S INVESTIGATION AND THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT FAILED TO RETAIN HIS CLIENT FILES IN ACCORDANCE WITH THE TEN YEAR REQUIREMENT IMPOSED BY THE RULES OF PROFESSIONAL CONDUCT.**

A. Standard of Review

A violation must be shown by a preponderance of the evidence. *In re Littleton*, 719 S.W.3d, 772, 775 (Mo. banc 1986). The Hearing Panel's recommendations "are advisory in nature. This Court reviews the evidence *de novo*, determines independently the credibility, weight and value of the testimony of the witnesses and draws its own conclusions of law". *In Re Oberhellmann*, 873 S.W.2d 851, 852 (Mo. banc 1994).

B. The Informant Did Not Prove By a Preponderance of the Evidence That Respondent Engaged in Professional Misconduct.

1. The evidence was clear at the hearing that Respondent's wife had taken "control" of the administrative aspects of Respondent's firm. Respondent testified that his former spouse's dominance over the firm's administrative matters increased after Respondent broke his wrist in 2009 and had his pulmonary embolism in 2010. Respondent testified that he thought he could trust his former spouse but as it turned out "she's a lying thief" and a "not a person who could be trusted". Respondent also testified that he "shouldn't have trusted a spouse who turned out to be a thief" and he made a "mistake of trusting a thieving spouse"

2. Respondent discovered during the case that his former spouse lied to him during the OCDC investigation. Respondent did believe that when he wrote the \$31,756.11 check to Mrs. Sisson that "the funds were in there". This "is a case of an attorney who was taken advantage of by his thieving spouse that caused this problem".

3. A former legal secretary of Respondent's law firm, Danielle Wilson, testified that Respondent's former spouse took over and controlled the administrative, financial and accounting matters of the office. Ms. Wilson also testified that Respondent's former spouse gave instructions to the staff that all non-legal matters and phone calls were to be directed to her and not Respondent, that she was told by Respondent's former spouse to not tell Respondent when his family members would call the office for him and that Respondent's former spouse mandated that all administrative mail, including bank statements, were to go her her and "they were not to go to you at all". Ms. Wilson testified that Respondent's former spouse "had to have control of everything". The Hearing Panel impermissibly refused to accept an email written by Respondent's former spouse in which she claimed to "control Farris Law Group".

4. The evidence shows that Respondent's former spouse made the transfers from the trust account. The Informant's investigator, Kelly Dillon, testified that she was unable to determine that Respondent personally made said transfers. Ms. Dillon testified at the Preliminary Hearing in the pending criminal case against Respondent's former spouse, whereby Judge Tony Williams found "probable cause to believe that the crime alleged was committed and that deft (sic) committed it". As cited above, the Court in the felony stealing case heard testimony at the Preliminary Hearing from a representative of Ozark Mountain Bank, the banking institution of the Respondent's trust account, who testified under oath that Respondent's former spouse, the former Chief Operating Officer (COO) of Respondent's law firm, personally and exclusively transferred the funds which are missing from the trust account by phone and that she made One Hundred Percent (100%) of the subject transfers by phone.

5. In addition to the criminal complaint that was filed by Respondent against his former spouse about the missing client funds, he also filed criminal complaints against her for making unauthorized misappropriations from the firm's operating account and by forging a ACH card at Target in the firm's name.

6. Respondent's former spouse told him when she told that the \$31,756.11 check to Mrs. Sisson did not clear the trust account, that "Oh, I looked it up, and I must have misunderstood.....I was so under stress with Dimitri and his seizures, and I remembered you talking about that money was for medical bills. So, what I did was....I wrote a check out of the trust and I paid it. I paid it for the medical bills." Respondent did not direct his former spouse to pay the Sisson medical bills.

7. Respondent was shocked when told at the November 27, 2012 meeting of the regional committee that the check that had been provided to him by his former spouse purporting to show payment to Skaggs Hospital of Mrs. Sisson's medical bills had not been presented on the trust account or received by the Hospital. Counsel for the Informant, Randee Stemmons, confirmed in a conversation with Respondent that he did, in fact, appear to be shocked when told about the missing check. Respondent testified that up until that point, Respondent "firmly believed that the money had been in the account, the money had been paid out of the account, been paid to Skaggs Hospital".

8. There is no evidence that Respondent acted with any intent to misappropriate the missing funds. What is clear is that Respondent trusted his former spouse, who turned out to be an embezzling thief.

9. There is no evidence that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation.

10. The Informant claims that Respondent failed to provide documentation to Informant. The Informant's investigator, Kelly Dillon, sent certain letters to a Respondent with a warning that if a response is not received by a set deadline that the failure would be considered to be a disciplinary violation. Ms. Dillon did not ever communicate to Respondent that he had not complied with such a deadline. Ms. Dillon also testified that she would not deny that the supplemental records requested had been mailed by Respondent. Respondent testified that the supplemental records were provided to OCDC and submitted said forms marked as Exhibit "D" to the Hearing Panel. Counsel for the Informant, Randee Stemmons, advised the Hearing Panel that she did not doubt that the bank statements requested by OCDC had been provided by Respondent.

WHEREFORE, Respondent, ERIC A. FARRIS, requests this Court to find that the Informant did not prove by a preponderance of evidence the allegations contained in the first Points Relied On of the Informant's Brief in that the evidence does not establish that Respondent engaged in professional misconduct.

ARGUMENT

II. THIS COURT SHOULD NOT IMPOSE DISBARMENT AS THE SANCTION IN THIS CASE SINCE INFORMANT DID NOT PROVE BY A PREPONDERANCE OF EVIDENCE THE ALLEGATIONS CONTAINED IN THE SECOND POINTS RELIED ON OF THE INFORMANT’S BRIEF IN THAT THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING MISAPPROPRIATION, SAFEKEEPING PROPERTY, DECEIT, MISREPRESENTATION AND COMMUNICATION IN HIS HANDLING OF CLIENT AND THIRD PARTY FUNDS IN BOTH THE SISSON AND DAUGHENBAUGH MATTERS AND THAT THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT ENGAGED IN DECEIT, DISHONESTY AND MISREPRESENTATION BY PRESENTING FALSE EVIDENCE TO THE OCDC AND THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT FAILED TO COOPERATE WITH THE DISCIPLINARY COUNSEL’S INVESTIGATION AND THE EVIDENCE DOES NOT ESTABLISH THAT RESPONDENT FAILED TO RETAIN HIS CLIENT FILES IN ACCORDANCE WITH THE TEN YEAR REQUIREMENT IMPOSED BY THE RULES OF PROFESSIONAL CONDUCT AND THE FACTS AND EVIDENCE DO NOT SUPPORT A CONCLUSION THAT DISBARMENT IS AN APPROPRIATE SANCTION IN THIS CASE.

The aims of the Missouri lawyer discipline system are “to protect the public and maintain the integrity of the legal profession,” not to punish the lawyer. *In re Coleman*, 295 S.W.3d 857, 869 (Mo. 2009).

Respondent understands that the allegations against him involve serious misconduct. Respondent further admits and understands that the issues related to his trust account are significant. Although the violations, as claimed, are serious, Respondent believes that the appropriate sanction, would be a stay against discipline and probation, with enough monitoring and other protections to ensure that trust account funds are properly handled in the future.

1. Respondent has acted to fix his mistakes

First and foremost, Respondent has taken control of the accounting of his office. With his former spouse out of the picture, then Respondent has taken over control of the administrative aspects of his law practice, which his former spouse had previously controlled to the detriment of his clients and his practice. Respondent has taken corrective steps to ensure proper operation of his trust account and has received additional guidance on trust account management.

2. Adequate conditions of probation can be fashioned to protect the public and Bar

In the event that the Court wishes to impose discipline, then Respondent would ask that said discipline be stayed with probation with adequate terms to protect the public and the Bar. “[P]robation is the appropriate punishment when the conduct can be corrected and the attorney’s right to practice law needs to be monitored or limited rather than revoked.” *Coleman*, 295 S.W.3d at 871 (citing *ABA Standards for Imposing Lawyer Sanctions*, Standard 2.7, Probation, Commentary). Under Rule 5.225, this Court and the Office of Chief Disciplinary Counsel have

broad discretion to impose controls to ensure that Respondent is operating appropriately. To this end, Respondent suggests the Court consider a two (2) year probation plan that would include payment of restitution, participation in law practice management and client trust account continuing legal education programs, participation the OCDC ethics school, to obtain a mentor in the legal community who is equipped in office management, to prepare an office management plan to be approved by OCDC and if necessary, employ a qualified consultant to help in office management type tasks and a requirement that, in the event of receipt of more than “X” amount of dollars from a client or client matter, then Respondent be required to provide documentation as to the disposal of those funds to either a mentor or to OCDC.

3. There is no evidence that Respondent misappropriated any of the missing funds

There is no evidence that Respondent misappropriated any of the missing funds. The thief in question is Respondent’s former spouse, who is charged with two (2) Class B counts of stealing said funds. Pursuant to the Probable Cause Statement in said case, Respondent’s former spouse:

“Elizabeth D. Farris committed the Class B Felony of Stealing (Two Counts) by appropriating funds from his (sic) firm’s trust account with the purpose to deprive victims B.S. and G.D. of payment from their settlement which was to be used to pay medical bills. Both B.S. and G.D. hired Eric Farris in September, 2010 in which both received settlements B.S. \$197,500.00 and G.D. \$90,000.00. B.S. and G.D. were to have funds taken from their settlement to settle unpaid medical bills to Skaggs Hospital now known as Cox Health in Branson. Elizabeth D. Farris was the Chief Operating Officer for the firm and handled all the finances

which was confirmed by former and current employees with Farris Law Group. Elizabeth D. Farris had access to the Trust and Operating Account and handled all of the firm's financial business with the firm. Elizabeth D. Farris took currency from the trust account and used the currecny (sic) for personal use knowing the money belonged to victim B.S. and G.D. and did so without the consent of the victims."

4. Respondent has generally had a positive impact on the public, the profession of the practice of law and its reputation.

Respondent has served thousands of satisfied clients throughout Southwest Missouri as a lawyer for more than 20 years, all with a relatively clean disciplinary history. During his two decades of Bar membership, Respondent has been an active member of the Bar, including his service as the first Chairperson of the Bar's Immigration Law Committee. At the hearing before Panel, ten witnesses who were former or current clients testified. All testified that Respondent handled their case with professionalism and hoped that Respondent would continue to practice law and represent them. Several witnesses testified that Respondent's reputation in the community was "excellent", "trustworthy", "highly respected", "very good", "well organized, good attorney with good ethics" and "professional and competent".

Such matters are properly considered as mitigating factors under *ABA Standards for Imposing Lawyer Sanctions*, Standard 9.32(g), evidence reflecting on Respondent's character and reputation and should weigh in favor of a stay on discipline.

5. Prior precedent supports a stay on discipline

Missouri law and precedent provides another basis supporting imposition of a stay in the event that discipline is imposed. Imposition of a stayed suspension with two-years' probation is consistent with Missouri Supreme Court precedent, for example *In re Coleman*, 295 S.W.3d 857 (Mo. 2009) and *In re Wiles*, 107 S.W.3d 228 (Mo. 2003). In the *Coleman* case, the respondent had a prior discipline history and was cited for numerous ethical violations, including misuse of his trust account. The Court found that Mr. Coleman's conduct justified the suspension of his license to practice law without leave to reapply for one year, but stayed the suspension and imposed probation.

In *In re Wiles*, 107 S.W.3d 228 (Mo. 2003), this Court imposed a stayed suspension upon a lawyer as reciprocal discipline after that lawyer had been censured by the Kansas Supreme Court. The misconduct found in Kansas included operating a personal injury practice without a trust account and issuing payment to a client (from the lawyer's operating account) through a check denied for insufficient funds. See *In re Wiles*, 58 P.3d 711 (Kan. 2002). This Court imposed the greater sanction of a stayed suspension because Wiles had 2 prior admonitions in Kansas and 11 prior admonitions in Missouri. Respondent meanwhile, only has a prior admonition from 16 years ago.

Consistent with *Coleman* and *Wiles*, this Court has imposed probation and a stayed suspension for trust account violations in numerous recent cases. Over the last three years, there have been more than a dozen cases where a lawyer received a stayed suspension and probation for violating 4-1.15 and other rules. Recent such cases include: (1) *In re Tate*, Case No. S93822 (Mo. December 24, 2013) (2) *In re Carter*, Case No. SC93739 (Mo. Nov. 26, 2013); (3) *In re*

McGee, Case No. SC93568 (Mo. Oct. 1, 2013); (4) *In re Dotson*, Case No. SC93042 (Mo. Jan. 29, 2013); (5) *In re Thompson*, Case No. SC93025 (Mo. Dec. 21, 2012); (6) *In re Peetz*, Case No. SC92968 (Mo. Dec.18.2012); *In re Butler*, Case No. SC92781 (Mo. Sept. 25, 2012); (8) *In re Jamison*, Case No. SC92683 (Mo. Aug. 3, 2012); (9) *In re Briegel*, Case No. SC92516 (Mo. May 29, 2012); (10) *In re Swischer*, Case No. 92336 (Mo. May 29, 2012); (11) *In re Harry*, Case No. SC92209 (Mo. Jan. 31, 2012); (12) *In re Koenig*, Case No. SC91685 (Mo. Oct. 25, 2011); (13) *In re Pawloski*, Case No. SC91152 (Mo. May 17, 2011) and (14) *In re Blum*, Case No. SC90312 (Mo. Sept. 1, 2009).

Respondent is eligible for probation under Missouri Supreme Court Rule 5.225 because (a) he is unlikely to harm the public during a period of probation and he can be adequately supervised; (b) he is able to perform legal services and is able to practice law without causing courts or the profession to fall into disrepute; and (c) he has not committed acts warranting disbarment. Further, in many of the dozen or so cases cited above, the Rules violations cited suggest potential harm to the disciplinary process, the Bar's reputation or client matters not present here. Accordingly, Respondent should receive, at most, what those lawyers received, a stayed suspension, not more.

WHEREFORE, Respondent, ERIC A. FARRIS, requests this Court to conclude that should discipline be imposed, that a stayed suspension and probation, with terms deemed appropriate by the Court, would be adequate to protect the public and the integrity of the Bar.

CONCLUSION

Respondent requests this Court to find that the Respondent did not engage in professional misconduct or in the alternative, if this Court wishes to impose discipline, then Respondent urges the court to impose at most a stayed suspension and place Respondent on probation for a period and on such terms as this Court deems appropriate, require Respondent to pay the appropriate disciplinary fee and court costs allowable to Informant under Rule 5 or grant Respondent any further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Eric A. Farris

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RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via the Court's electronic case filing system on this 28th day of October, 2014 to all counsel of record.

/s/ Eric A. Farris

Eric A. Farris

CERTIFICATE: RULE 84.06(C)

I certify to the best of my knowledge, information and belief, that this brief (1) includes the information required by Rule 55.03; (2) complies with the limitation contained in Rule 84.06(b); and (c) contains 7,430 words, according to Wordperfect, which is the word processing system used to prepare this brief.

/s/ Eric A. Farris

Eric A. Farris